



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Support for H.R. 3544 - Litigation Reform for Cities (McClintock)

MEETING DATE: April 4, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Authorize the Mayor, on behalf of the City Council, to send a letter of support for H.R. 3544 - Litigation Reform for Cities (McClintock).


BACKGROUND INFORMATION: The City was recently asked by a citizen to support H.R. 3544 pertaining to litigation reform for cities and send a letter of support regarding the same to Congressman McClintock.

H.R. 3544 was introduced by Congressman McClintock to amend the Federal Water Pollution Control Act to limit citizen suits against publicly-owned treatment works, to provide for defenses, to extend the period of a permit, to limit attorneys' fees, and for other related purposes. The full text of the proposed legislation is attached.

For these reasons, it is recommended that local governments support the proposed legislation.

FISCAL IMPACT: Not applicable at this time.

FUNDING AVAILABLE: Not applicable at this time.



Randi Johl
City Clerk

APPROVED: 

Konradt Bartlam, City Manager

CITY COUNCIL

JOANNE MOUNCE, Mayor
ALAN NAKANISHI,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
PHIL KATZAKIAN

CITY OF LODI

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KONRADT BARTLAM,
City Manager
RANDI JOHL, City Clerk
D. STEPHEN SCHWABAUER
City Attorney

April 4, 2012

Honorable Tom McClintock
428 Cannon House Office Building
Washington, DC 20515

Via Facsimile: (202) 225-5444

SUBJECT: H.R. 3544 – LETTER OF SUPPORT

Dear Congressman McClintock,

The City of Lodi is pleased to provide this letter of support for H.R. 3544, which would amend the Federal Water Pollution Control Act to limit citizen suits against publicly-owned treatment works, provide for defenses, extend the period of a permit, limit attorneys' fees, and for other related purposes.

As you may be aware, the City of Lodi is located in the central valley amidst wine country. Since 1923, the City has been providing wastewater collection and treatment services to the community. The cornerstone of the City's program, the White Slough Water Pollution Control Facility (White Slough) was originally constructed in 1966. This facility replaced one of the oldest secondary treatment facilities in the Western United States. White Slough provides the City with a means to achieve water quality standards required for the protection of the environmentally sensitive Sacramento-San Joaquin Delta. In addition, the City is in the process of constructing a new treatment plant which will continue to serve the community well into the future. The reforms set forth in H.R. 3544 will assist local taxpayers and the City in keeping unnecessary litigation-related costs down while focusing on the needed operations and maintenance of the facilities.

For these reasons, the City of Lodi is pleased to provide this letter of support for H.R. 3544.

Sincerely,

JoAnne Mounce
Mayor

C: Stephen Qualls, League of California Cities
File

Randi Johl

From: Randi Johl
Sent: Monday, March 26, 2012 09:25 AM
To: Randi Johl
Subject: FW: Please **Support** H.R. 3544 (Litigation Reform for Cities)

-----Original Message-----

From: Janice Magdich
Sent: Mon 3/12/2012 3:29 PM
To: Rad Bartlam; Steve Schwabauer; Wally Sandelin
Subject: RE: Please Support H.R. 3544 (Litigation Reform for Cities)

I don't see any red flags. The legislation amends the Federal Water Pollution Control Act to among other things, limit citizen lawsuits against publicly owned treatment plants to actions involving significant non-compliance (as defined by EPA guidelines); provide additional affirmative defenses for discharge or damage that are the result of an act of God, act of war, or act or omission of third party; limits on the recovery of attorneys fees recoverable by plaintiff to the prevailing rate in the community where the publicly owned plant is located; and extends the term of permits for publicly owned treatment facilities from 5 to 15 years.

janice

-----Original Message-----

From: Alex Aliferis [mailto:aaaliferis@yahoo.com]
Sent: Thu 3/8/2012 3:03 PM
To: Rad Bartlam
Cc: aaaliferis@yahoo.com
Subject: Please Support H.R. 3544 (Litigation Reform for Cities)

Dear Mr. Bartlam,

Please, I urge the city of Lodi to look at H.R. 3544. HR 3544 by Congressman Tom McClintock (R-CA) deals with litigation reform for cities in relation to wastewater treatment plants.

The city of Colfax supports H.R. 3544 in addition to El Dorado County. I am sure other cities agree with H.R. 3544.

As a citizen, I urge the city of Lodi to send a letter to Congressman McNerney asking for his cosponsorship and support of H.R. 3544, if you agree with this legislation. This is needed reform that won't burden Lodi Taxpayers from future settlements. These settlements end up costing the citizens in term of high fees and taxes.

Litigation reform is long overdue.

Sincerely,

Alex Aliferis
505 E Locust St.
Lodi, CA 95240

112TH CONGRESS
1ST SESSION

H. R. 3544

To amend the Federal Water Pollution Control Act to limit citizens suits against publicly owned treatment works, to provide for defenses, to extend the period of a permit, to limit attorneys fees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2011

Mr. MCCLINTOCK introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to limit citizens suits against publicly owned treatment works, to provide for defenses, to extend the period of a permit, to limit attorneys fees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. LIMITATION ON CITIZEN SUIT PROVISION.**

4 Section 505 of the Federal Water Pollution Control
5 Act (**33 U.S.C. 1365**) is amended—

6 (1) in subsection (a) by striking “subsection
7 (b)” and inserting “subsections (b) and (i)”; and

8 (2) by adding at the end the following:

1 “(i) LIMITATION FOR POTW SUITS. —

2 “(1) IN GENERAL.—No action may be com-
3 menced under subsection (a)(1) by a citizen with re-
4 spect to a publicly owned treatment works to enforce
5 an effluent standard or limitation under this Act or
6 an order issued by the Administrator or a State with
7 respect to such a standard or limitation unless the
8 publicly owned treatment works is in significant non-
9 compliance, as defined in the Environmental Protec-
10 tion Agency’s December 12, 1996, guidance docu-
11 ment entitled ‘A General Design for SNC Redefini-
12 tion Enhancement in PCS’.

13 “(2) EXCEPTION.—Notwithstanding paragraph
14 (1), no action may be commenced under subsection
15 (a)(1) with respect to a publicly owned treatment
16 works that is in significant non-compliance based on
17 a manual designation, as defined in the Environ-
18 mental Protection Agency’s December 12, 1996,
19 guidance document entitled ‘A General Design for
20 SNC Redefinition Enhancement in PCS’.”.

21 **SEC. 2. AFFIRMATIVE DEFENSES.**

22 Section 309 of the Federal Water Pollution Control
23 Act (33 U.S.C. 1319) is amended by adding at the end
24 the following:

25 “(h) AFFIRMATIVE DEFENSES. —

1 “(1) IN GENERAL.—There shall be no liability
2 under this Act for a person otherwise liable for the
3 unlawful discharge of a pollutant from a publicly
4 owned treatment works who can establish by a pre-
5 ponderance of the evidence that the immediate cause
6 of the unlawful discharge and any damages was—

7 “(A) an act of God;

8 “(B) an act of war;

9 “(C) an act or omission of a third party
10 other than an employee or agent of the defend-
11 ant, or than one whose act or omission occurs
12 in connection with a contractual relationship,
13 existing directly or indirectly, with the defend-
14 ant, if the defendant establishes by a prepon-
15 derance of the evidence that—

16 “(i) he exercised due care in light of
17 all relevant facts and circumstances; and

18 “(ii) he took precautions against fore-
19 seeable acts or omissions of any such third
20 party and the consequences that could
21 foreseeably result from such acts or omis-
22 sions; or

23 “(D) any combination of the foregoing
24 subparagraphs.

1 “(2) ADDITIONAL DEFENSES.—All general de-
2 fenses, affirmative defenses, and bars to prosecution
3 that may apply with respect to other Federal crimi-
4 nal offenses may apply under this Act and shall be
5 determined by the courts of the United States ac-
6 cording to the principles of common law as they may
7 be interpreted in the light of reason and experience.
8 Concepts of justification and excuse applicable under
9 this section may be developed in the light of reason
10 and experience.”.

11 **SEC. 3. WAITING PERIOD.**

12 In implementing the Federal Water Pollution Control
13 Act, the Administrator of the Environmental Protection
14 Agency or a State, as the case may be, shall provide a
15 60-day waiting period between the notice of a violation of
16 the Act by a publicly owned treatment works and the
17 issuance of a civil penalty. If within such 60-day period
18 the publicly owned treatment works submits a viable plan
19 for correcting the non-compliance that is the subject of
20 the notice and thereafter diligently implements such plan,
21 the Administrator shall not assess a civil penalty for the
22 notice of violation.

23 **SEC. 4. PERMIT LENGTH.**

24 (a) IN GENERAL.—Notwithstanding any other law,
25 any permit issued to the owner or operator of a publicly

1 owned treatment works by the Administrator of the Envi-
2 ronmental Protection Agency or a State, as the case may
3 be, to discharge a pollutant under the Federal Water Pol-
4 lution Control Act shall have a 15-year term.

5 (b) CONFORMING AMENDMENT.—Section
6 402(b)(1)(B) of the Federal Water Pollution Control Act
7 is amended by striking “five years” and inserting “5
8 years, or, in the case of a publicly owned treatment works,
9 15 years”.

10 **SEC. 5. ATTORNEY’S FEES.**

11 Section 505(d) of the Federal Water Pollution Con-
12 trol Act (33 U.S.C. 1365(d)) is amended by inserting after
13 the first sentence the following: “With respect to an action
14 involving a publicly owned treatment works, the court, in
15 determining whether the costs of litigation (including at-
16 torney and expert witness fees) are reasonable, shall con-
17 sider the prevailing rate of such fees in the community
18 where the publicly owned treatment works is located.”.

19 **SEC. 6. COST BENEFIT ANALYSIS.**

20 Notwithstanding any other law, any new or increased
21 treatment requirement associated with a permit issued to
22 the owner or operator of a publicly owned treatment works
23 by the Administrator of the Environmental Protection
24 Agency or a State, as the case may be, to discharge a
25 pollutant under the Federal Water Pollution Control Act

1 shall be subject to a cost-benefit analysis performed by
2 the Administrator or the State to ensure that the costs
3 imposed on such owner or operator to comply with such
4 new or increased requirement are outweighed by the ben-
5 efit to the public of the new or increased requirement.

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